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PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

Written statement submitted by the International Humanist and Ethical Union, a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 June 1991]

1. It is clear that in seeking to promote, protect and restore human rights the problems encountered can be complex and many-sided. We know that they are aggravated by such factors as poverty, civil and inter-State conflicts, lack of education and various special causes of discrimination. But overall there exists too the variety of socio-economic, cultural, religious and political conditions and norms that prevail worldwide in some 170 sovereign States. With time, fresh knowledge and rapid technical change open up ever new vistas of right and responsibility that previously were quite unknown.

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2. It is a fact that the Universal Declaration of Human Rights and most related international instruments arose out of the Declaration of the Rights and Duties of the World Citizen first elaborated in London by the writer H.G. Wells between 1940 and 1942; and in diffusing his Declaration worldwide at that time, Wells was already conscious that the values that must underlie such a global code could not be assumed to be familiar common ground for all cultures.

3. Existing international norms of right and duty rest on a distinctive set of values and a specific conception of humanness; but the essence of that common underlying basis has never been openly defined or stated. For this reason the International Humanist and Ethical Union here suggests that the drafting and proclaiming of a Universal Declaration of Human Values could serve as a unifying statement that would help to explain, complement and reinforce the existing body of international human rights instruments. To illustrate and make clear the full nature of the proposal, a draft for such a Universal Declaration of Human Values will be found annexed to the present document.

Annex

UNIVERSAL DECLARATION OF HUMAN VALUE

Preamble

Convinced that full realization of the Universal Declaration of Human Rights requires acceptance by all peoples of the world of those irreducible values on which rights and duties are founded;

Recalling that disregard of humane values has resulted in barbarous acts that have outraged the conscience of humanity;

Mindful that human beings develop ideals in common through the exercise of their rationality under conditions of social existence;

Conscious that an acceptance of basic shared values by peoples of all nations is a precondition for any global order founded on reason, truth, freedom and compassion;

Recognizing that the peoples of the United Nations, in the Charter and in the Universal Declaration of Human Rights, have affirmed their faith in the dignity and worth of the human person and have resolved to promote social and cultural progress in peace and harmony;

Further convinced that a common understanding and acceptance of basic human ideals must underlie the success of any such undertaking;

Now therefore the ...

Proclaims this Universal Declaration of Human Values as a common ideal and basis of attainment for all peoples and all nations, both in their personal and their collective relations.

Article 1. Awareness of values

Self-awareness, of the human person as a unique and responsible social being endowed with reason and conscience, is the ultimate source of all recognition of values.

Article 2. Reason

Reason, a hallmark of humanness, is an essential faculty in promoting the moral progress and well-being of humankind, enabling human beings to have a view of their own existence and a world view that together activate their thoughts, beliefs and actions. Pursuit of rational thinking is thus to be seen both as an intrinsic human attribute and a human value.

Article 3. Critical intelligence

It is in the essential nature of human beings to question, to examine and to seek to understand. In an effort to eliminate error it is vital to subject all beliefs to the scrutiny of reason and critical intelligence. An unexamined belief is not worth having.

Article 4. Truth

The aim of all rational thinking is the discovery of truth. Truth can only consist of conditional beliefs about reality that result from rational thinking and experience. Acceptance of an overarching quest for truth is thus to be seen as a supreme human value.

Article 5. Tolerance

To examine different interpretations of reality a reciprocity of tolerance is essential in the search for truth. Absence of such toleration must lead to denial of freedom and suppression of creativity.

Article 6. Creativity

All social advance is the outcome of human creativity. Rooted in the individuality of every human being, creativity can flourish only in an atmosphere conducive to freedom.

Article 7. Freedom

The uniqueness of every human person requires an acceptance of such freedom for each as is compatible with the maximizing of corresponding freedoms for all in every sphere of existence.

Article 8. Equality

Respect for the dignity of each unique personality requires that human beings shall be treated as equals in so far as concerns their birth, religion, colour or sex.

Article 9. Justice

A principle of justice as appropriately equal reciprocity, which connotes equal consideration for the well-being of every individual, must inform all social institutions and relations between individuals.

Article 10. Oneness of man and nature

Humans being a part of nature necessitates their living in harmony with nature. Concern for all life and for a maximum sustainable conserving of all natural and social environments is an essential part of all human activity.

Article 11. Universal cultural basis

Beyond the multiplicity of cultures it must be the aim of all human endeavour to evolve and maintain those common cultural elements that rest on reason, truth, equality of freedom, tolerance and compassion.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by Habitat International Coalition, a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 June 1991]

TOWARDS A DEFINITION OF POPULATION TRANSFER; DIFFERENCES BETWEEN POPULATION TRANSFER AND EVICTIONS AND EFFECTS OF POPULATION TRANSFER

1. This submission addresses the practice of population transfer, dealt with in resolution 1990/17, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-second session.

2. Population transfer is a complex phenomenon which manifests itself in a variety of ways and in different situations. As there is no generally agreed-upon definition for this commonly used term, we suggest a definition and explore some of the central characteristics of this practice.

3. Population transfer may be defined as:

> The movement of large numbers of people, either into or away from a certain territory, with State involvement or passive or active acquiescence of Government and without the free and informed consent of the people being moved or the people into whose territory they are being moved.

4. Population transfer includes the movement of large numbers of people. The practice of population transfer is aimed at distinct racial, ethnic, or religious groups, being separate peoples, nations or minorities within the boundaries of a certain State, and often constitutes part of a larger policy towards this group.

5. Government involvement in mass population movements can range from directly forcing or conducting transfers to supporting or actively encouraging transfers through, for instance, government incentive programmes.

6. Population transfer is not a spontaneous act; it involves planning, policies, and is often legitimized by a legislative basis.

7. Nearly all transfers occur in the absence of free and informed consent either of the people being moved or of the people into whose territory they are being moved. Negotiations between the Government and both affected groups are generally not carried out.

8. Transfers may be conducted in time of peace, or in time of war.

9. We can distinguish broadly two types of population transfer:

(a) The implantation of settlers;

(b) Removal of persons.

10. The most commonly recognized context for the implantation of settlers is into occupied territories, but this form of population transfer also occurs outside of situations involving occupations. The removal of persons may involve forced or forcible relocation into reservations or model villages or away from their traditional homelands.

Differences between population transfer and evictions

11. Confusion may arise between the practice of population transfer and the process of eviction. Population transfer invariably results in one or other form of eviction, whether directly or indirectly. Population transfer may also include evictions as a tool in the process of transferring people. But where population transfer constitutes part of a larger policy directed towards a specific racial or ethnic group and is often rooted in racism, evictions may be carried out to clear certain locations of their inhabitants. The motivations of undertaking movement of persons because of attractive possibilities of the area belongs more to evictions, while movement of persons either because of the ethnic composition of the people being moved or the people into whose territory settlers are being moved constitutes more a motivation for the practice of population transfer.

12. For example, in the case of people being provided with government incentives to voluntarily transfer themselves into the territory of another people - as can be seen in colonial or occupational situations, where the aim is mostly to slowly eradicate the culture or identify of or gain more control

over the population in the receiving region - we cannot speak of evictions, although the transfer may indirectly lead to evictions. In other cases evictions play a more central role in the transfer process.

Human rights dimensions of population transfer

13. Population transfer imposes large costs on the lives of those involved, especially in the context of human rights. In a broad sense, there are two categories of people affected by population transfer: first, those being transferred (settlers or removed persons); and, second, those into whose territory others are being moved (original inhabitants).

14. Population transfers generally constitute serious violations of the majority of human rights enshrined in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and other international instruments. As the application of this practice often singles out specific racial or religious groups it constitutes a violation of the rights laid down in the International Covenant on the Elimination of All Forms of Racial Discrimination, particularly article 5 of this text.

15. The practice of moving people into occupied territories clearly violates article 49 of the Fourth Geneva Convention which states:

> "The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies. ... Individual or mass forcible transfers ... are prohibited, regardless of their motive".

16. Considering the Convention's broad applicability (as emphasized in art. 41), this provision relates to population influx during and after armed conflicts until a political settlement has been reached.

17. In connection with population transfers, attention should also be given to the question of genocide. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines the crime of genocide to include acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group by "causing serious bodily or mental harm to members of the group" or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part".

18. The applicability of this clause in cases of mass expulsion which cause a heavy loss of life and in cases of the transfer of population in already inhabited areas which could cause the disappearance of a people seems evident.

19. The practice of population transfer also raises the question of self-determination, as defined in article 1 of both Human Rights Covenants:

> "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and fully pursue their economic, social and cultural development".

20. The transfer of one people into the territory of another, whether occupied or not, as well as mass expulsions are clearly in violation of this right which is a prerequisite to the exercise of other fundamental human rights and freedoms.

21. Although a number of both individual and collective rights of peoples are grossly violated when population transfers are carried out, no international legal standard specifically addresses and outlaws the act of population transfer itself and the many manifestations it can and does take.

22. Habitat International Coalition feels that it is appropriate and necessary that the Sub-Commission undertake both immediate and long-term action concerning the human rights dimensions of population transfer.

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by The Nordic Saami Council, Inuit Cicumpolar Conference, International Work Group for Indigenous Affairs and Anti-Slavery International, non-governmental organizations in consultative status

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[28 June 1991]

RECENT DEVELOPMENTS IN THE CHITTAGONG HILL TRACTS, BANGLADESH

1. In its decision 1989/109 the Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed its thanks to the Government of Bangladesh for the progress made in respect of the treatment of its tribal population. Unfortunately, information given to the International Chittagong Hill Tracts Commission during its recent visit to Bangladesh and India clearly shows that this conclusion was premature. The findings of the International Commission have already been summarized in document E/CN.4/Sub.2/AC.4/1991/5.

2. During the visit of the Commission multi-party democracy was restored in Bangladesh. This gave rise to hopes for a substantial improvement in the human rights situation in the Chittagong Hill Tracts. However, the Chittagong Hill Tracts are still under tight military control and gross violations of human rights are prevalent throughout the area. Furthermore, since the fall of the Ershad regime all District Councils in Bangladesh have been suspended, except for the three District Councils of the Chittagong Hill Tracts. These were established in 1989 under procedures implemented by force and intimidation which were heavily criticized by the Commission.

3. Since 1979 over 400,000 Bengali settlers have been moved from the plains to the Hill Tracts, taking over land belonging to the hill people. Property rights of the hill people, recognized by Bangladeshi law, have been contravened as settlers have illegally occupied land belonging to the indigenous people.

4. The militarization of the Hill Tracts is not confined only to the tribal people. The largely involuntary relocation of hill people into cluster villages has been paralleled by a similar process of confining Bengali settlers into military-controlled guchchagrams. Large numbers of settlers expressed to the Commission their desire to return to the plains.

5. At the issuing of the Chittagong Hill Tracts Commission Report at the House of Lords, London, on 23 May 1991, Co-Chairman Wilfried Telkämper, Vice-President of the European Parliament, stated that an enormous percentage of Bangladesh's national income is spent on military oppression in the Hill Tracts. In spite of being one of the world's poorest countries, Bangladesh appears to make the intense militarization of the Hill Tracts a priority, adding further to its already overwhelming problems.

6. The Commission recommends that the great step to multi-party democracy which took place in December 1990 be extended to cover the whole country, including the Chittagong Hill Tracts. All further settlement by outsiders in the Hill Tracts should be stopped. Vast numbers of Bengali settlers in the Hill Tracts want to leave, but lack the means to do so. Voluntary relocation should be discussed in the context of foreign aid support. Cluster villages should be dismantled and an independent investigation of title to land and illegal occupants should take place. Demilitarization of the Chittagong Hill Tracts must be a priority and autonomous political institutions established following a referendum for the hill peoples. The District Council laws should be repealed or amended.

7. The signatories of this statement are gravely concerned about the many violations of human rights that have taken place in the Chittagong Hill Tracts as documented by the International Commission. Most of these violations occurred before the new Government came to power. However, there have been reports of recent atrocities against the hill tribes. Furthermore, the effect of the recent cyclone on the Chittagong Hill Tracts has been largely neglected, and there have been reports that no emergency aid has been sent to the people of the region.

8. We are confident that the new Government of Bangladesh is able and willing to change radically its policy towards the Chittagong hill tribes and to improve the human rights situation in the region.

9. We strongly urge that the United Nations appoint a Special Rapporteur or provide a person under its advisory services to work with the Government of Bangladesh, the ILO and competent NGOs to assist and monitor the changes in policy recommended by the International Commission.

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the Four Directions Council,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 July 1991]

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PROTECTION OF CULTURAL PROPERTY - PART II

International standards and mechanisms

1. The principal instrument in this field, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), has several serious limitations. Both of the States involved in a dispute must be parties to the Convention, and the removal of the object from its country of origin must have occurred after the Convention came into force in both States. Most major art-importing States, such as France, Germany, the United Kingdom and Japan, are, moreover, not parties. Indigenous peoples lost much of their cultural property before 1970, and a large part was exported to non-party States. The OAS Convention on the Protection of The Archaeological and Artistic Heritage of the American Nations (The Convention of San Salvador, 1976), takes the same approach and has the same shortcomings.

2. In 1978, UNESCO also established the Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin with a mandate to undertake good offices and mediation at the request of States, and to organize projects with (for example) ICOM and UNESCO National Committees for conducting inventories of cultural property. These resources are not yet available to indigenous peoples, and the Committee has avoided disputes between States and their constituent peoples. For example, it declined to take up Scotland's claims to the Stone of Scone, for example, regarding it as an internal affair of the United Kingdom.

3. The International Institute for the Unification of Private Law (Unidroit) has prepared a draft Convention on Stolen or Illegally Exported Cultural Objects, (Study LXX, Doc. 19 (1990)). The Unidroit draft opens the courts of each contracting State to claims by the others and requires "compensation" to be paid by the States making claims to innocent purchasers of stolen cultural property. It permits (but does not require) the retroactive application of its provisions. It also prescribes a number of factors to be considered by courts when determining whether to return a particular object. These include the "outstanding cultural importance" of the object to the claiming State, as well as its "use by a living culture" within that State. This last provision is of particular relevance to indigenous peoples.

4. Some forms of cultural property are also eligible for protection as intellectual property. The Berne Convention for the Protection of Literary and Artistic Works, as amended in 1971, authorizes States to designate "competent authorities" to control the licensing and use of folklore. In 1982, WIPO drafted Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, which include the tangible expressions of culture such as pottery, costumes, jewellery, and basketry. A State could, consistent with the Berne Convention, delegate responsibilities for the definition, protection and licensing of folklore to indigenous peoples themselves.

5. Several international human rights instruments contain provisions which could be utilized to protect cultural property. Article 15 (2) of the International Covenant on Economic, Social and Cultural Rights requires States

to take steps for the "conservation" of culture, and article 27 of the International Covenant on Civil and Political Rights guarantees the right of minorities to enjoy their own cultures and to practise their own religions. Article 5 (d) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination with respect to the ownership, individually or collectively, of property. Failure to protect indigenous peoples' collective ownership of important cultural and religious objects may undermine their culture and religion, and constitute discrimination.

Recommendations

6. UNESCO should be encouraged to develop a comprehensive approach to the protection of indigenous peoples' cultural property, including:

(a) Documenting and widely publicizing traditional law regarding cultural property, with the assistance of indigenous peoples;

(b) Providing assistance to indigenous peoples for inventories of museum collections, and for recovering and conserving objects;

(c) Giving the Intergovernmental Committee an explicit mandate to assist indigenous peoples in the recovery of their cultural property.

7. WIPO should be invited to organize one or more regional seminars on strengthening the use of the Berne Convention to protect indigenous peoples' cultural property, with the participation of Governments and indigenous peoples' organizations. WIPO should also be encouraged to consider developing a programme of technical assistance to indigenous peoples in this field.

8. The Centre for Human Rights should assist Mrs. Daes in preparing a briefing for the members of the principal human rights supervisory bodies on the application of human rights standards to these issues. Indigenous peoples should likewise be made aware of the opportunity to challenge the export of cultural property through communications under the Optional Protocol, directed against the importing and/or exporting States.

9. UNESCO, WIPO and the Centre for Human Rights could develop such programmes as contributions to the International Year for the World's Indigenous People (1993).